

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

MICHAEL T. GRAVELY,

Petitioner,

v.

CASE NO. 2:11-CV-500

JUDGE GEORGE C. SMITH

MAGISTRATE JUDGE MICHAEL R. MERZ

WARDEN, ROSS CORRECTIONAL
INSTITUTION,

Respondent.

OPINION AND ORDER

On January 23, 2013, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant petition for a writ of habeas corpus be dismissed. Petitioner filed *Objections* to the Magistrate Judge's *Report and Recommendation*. Doc. No. 17. In response, the Magistrate Judge issued a *Supplemental Report and Recommendation*. Doc. No. 20. Petitioner has filed *Objections* to the Magistrate Judge's *Supplemental Report and Recommendation*. Doc. No. 21. Respondent has filed a *Response*. Doc. No. 22. For the reasons that follow, Petitioner's *Objections* are **OVERRULED**. The *Report and Supplemental Report and Recommendation* are **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

In his *Objections* to both the original and supplemental *Report and Recommendations*, Petitioner objects solely to the Magistrate Judge's recommendation of dismissal on the merits of claims one and two, in which he asserts that the evidence was constitutionally insufficient to sustain his convictions on felonious assault and that he was denied a constitutionally fair trial because the trial court refused to sever the drug charges from the felonious assault charges. Petitioner again raises all of the same arguments he previously presented. For example, he complains of the lack of

evidence indicating he was the shooter. He objects to the Magistrate Judge's conclusion that he failed to establish prejudice from the joinder of drug and felonious assault charges, arguing that the jury used evidence from the drug charges to establish his motive for shooting at police. He argues at length that the trial court improperly permitted joinder of these charges against him.

In response, Respondent argues that Petitioner's March 8, 2013, *Objections* should be stricken from the record as one day late.¹ Additionally, Respondent argues that Petitioner has waived his right to *de novo* review by failing to raise the some arguments for the first time in his *Objections* to the *Supplemental Report and Recommendation* that he did not raise in his original objections.² Alternatively, it is the position of the Respondent that Petitioner's *Objections* should be overruled.

Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review of both the Magistrate Judge's original *Report and Recommendation* and *Supplemental Report and Recommendation* of dismissal of habeas corpus claims one and two on the merits. For the reasons already well detailed in the *Report and Recommendation* and *Supplemental Report and Recommendation*, Petitioner's arguments are not well taken. Petitioner's *Objections* are, therefore, **OVERRULED.**

¹Respondent has not filed a motion to strike and only mentions the untimeliness argument in his response to the *Objections*. Thus, the Court need not specifically grant or deny the request. Nevertheless, the Court notes that the filing was timely, as the Notice Regarding Objections specifically indicated that the period for objections was extended to seventeen days. See *Supplemental Report and Recommendation*, Doc. 20, PageID 1375).

²The Court does not agree that Petitioner has waived his right to *de novo* review of matters raised in his *Objections* to the *Supplemental Report and Recommendation*. All of Petitioner's arguments in both sets of *Objections* are related to various aspects of the Magistrate Judge's conclusions on the merits of claims one and two.

The *Report and Recommendation* and *Supplemental Report and Recommendation* are **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

IT IS SO ORDERED.

s/ George C. Smith
GEORGE C. SMITH
United States District Judge